

**REMARKS**

Claims 1-7, 9, 10, and 16 are all the claims pending in the present application. The previous prior art rejections have been withdrawn, however the Examiner now applies a new prior art rejection with respect to all of the pending claims as well as a rejection under 35 U.S.C. § 112, first paragraph. Specifically, claims 4 and 16 are rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. Claims 1-7, 9-10, and 16 are all now rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Nelson et al. (U.S. Patent No. 5,568,641), in view of Abgrall (U.S. Patent No. 6,401,202), and further in view of Kurihara (JP 411328040A).

**§ 112, First Paragraph, Rejections - Claims 4 and 16**

Claims 4 and 16 are rejected under 35 U.S.C. § 112, first paragraph, based on the reasons set forth on pages 3-4 of the present Office Action. First, Applicants thank the Examiner for discussing the rejections under 35 U.S.C. § 112, first paragraph, with the undersigned.

The undersigned discussed the rejections under 35 U.S.C. § 112, first paragraph, with the Examiner in an effort to develop the best strategy to respond to these rejections, and to understand the specific features that the Examiner believes do not comply with the written description requirement. The Examiner directed Applicants' attention to the features of "the copying the information" and "storing the copy of the old version of the software" of claims 4 and 16, respectively. The Examiner indicated that these particular portions are the objectionable portions of the claim features identified in the Office Action.

In response, Applicants respectfully direct the Examiner's attention to page 4, line 1 - page 5, line 8 of the originally filed specification, as this portion of the specification would have demonstrated to one of ordinary skill in the relevant art at the time the application was filed, that

the inventors of claims 4 and 16 were in possession of the claimed invention. That is, the above-cited portions of the specification relate to checking whether a failure occurs during an upgrade. On page 4, it is described that the upgrading of software can include the steps of downloading a new version of software through a network, copying the old version of the software stored in a first area of the network device to a second area of the network device, erasing the old version of the software from the first area of the network device, and storing the new version of the software in the first area. The cited portion of the specification further indicates that a failure is a failure in the network device which is checked during the erasing and storing steps. Clearly, the cited portions of the originally filed specification describe that checking occurs during an upgrade, and further describes certain aspects of an upgrade, which Applicants submit are described in the above quoted features of claims 4 and 16, respectively. Applicants further argue that even though the cited portions of the originally filed application do not recite verbatim the above-quoted features of claims 4 and 16, one of ordinary skill in the art clearly would understand that the above-cited features of 4 and 16 are at least implicitly represented on pages 4 and 5 of the originally filed specification such that it is clear that the inventors, at the time the application was filed, had possession of the claimed invention, including the specific features described above.

At least based on the foregoing, Applicants submit that claims 4 and 16 satisfy 35 U.S.C. § 112, first paragraph.

The Examiner agreed to consider the arguments above during the interview.

§ 103(a) Rejections (Nelson/Abgrall/Kurihara) - Claims 1-7, 9-10, and 16

Claims 1-3, 5-7, 9, 10, 14, and 15 are rejected based on the reasons set forth on pages 4-10 of the Office Action, and the Examiner substantially maintains his previous arguments in the *Response to Argument* section of the Office Action.

In response, since the Examiner does not substantially add to his previous arguments, Applicants substantially maintain the previous arguments with respect to claims 1-3, 5-7, 9, and 10. The gist of the previously presented arguments are set forth below, however the specific details of the arguments are set forth in our previous submissions to the PTO.

That is, Applicants maintain that neither of the applied references, either alone or in combination, discloses or suggests at least, “a conditional access system (CAS) for verifying whether the network device has authority to upgrade the software,” as recited in claim 1 and similarly recited in independent claims 7 and 9. *See page 7 of Amendment dated October 31, 2007.*

Further, Applicants maintain that one of ordinary skill in the art would not have been motivated to combine the teachings of Nelson with those of Abgrall, as these two applied references are directed to two different inventions. *See page 7 of Response dated June 20, 2007 and page 8 of October 31 Amendment.*

Yet further, Applicants maintain that the applied references do not disclose or suggest, “a first memory for storing data necessary for operating the network device,” and a separate “second memory for storing information transferred through the network,” and “wherein the monitoring means further monitors whether at least one failure occurs in the network,” as recited in claim 1. *See page 7 of June 20<sup>th</sup> Response and page 8 of the October 31 Amendment.*

With respect to dependent claims 2-6, and 16, Applicants submit that these claims are patentable at least by virtue of their dependencies from independent claim 1. Further, with respect to claim 2, Applicants maintain the previously submitted arguments.

Applicants maintain that independent claims 7 and 9 are patentable at least based on reasons similar to those set forth above with respect to claim 1. Applicants maintain that dependent claim 10 is patentable at least by virtue of its dependency from independent claim 9.

Further, with respect to claim 10, Applicants maintain the previous argument that Nelson does not disclose or suggest at least, “wherein the at least one failure is a failure in the network device which is checked during the erasing and storing steps,” as recited in claim 10. *See pages 8-9 of June 20<sup>th</sup> Response and page 9 of October 31 Amendment.*

Further, with respect to claim 16, which was added in the previous Amendment, Applicants submit that the applied references, either alone or in combination, do not disclose or suggest at least, “wherein the at least one failure of the network device and the at least one failure of the network is a failure which is checked during the storing the copy of the old version of the software or the downloading the software through the network.” The Examiner cites col. 2, lines 33-40 and the Abstract of Nelson as allegedly satisfying the features of claim 16, however the cited portions of Nelson only generally discuss power failure during an upgrade; the specific features set forth in claim 16 are nowhere even mentioned in the applied references, including Nelson.

At least based on the foregoing, Applicants maintain that claims 1-3, 5-7, 9, 10, and 16 are patentably distinguishable over the applied references, either alone or in combination.

### **Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

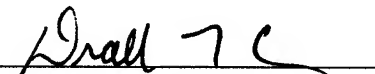
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